

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)

Geographic Partitioning and)
Disaggregation by Commercial)
Mobile Radio Services Licensees)

WT Docket No. 96-148

Implementation of Section 257 of)
the Communications Act --)
Elimination of Market Entry)
Barriers)

GN Docket No. 96-113

To: The Commission

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REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits these Reply Comments regarding Comments filed by other participants in response to the Commission's Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding.^{1/} The Notice looks toward authorization of geographic partitioning and spectrum disaggregation in the near term by broadband Personal Communications Service ("PCS") licensees.

^{1/} 61 Fed. Reg. 38693 (July 25, 1996).

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I. REPLY COMMENTS

A. The Commission's PCS License Partitioning and Disaggregation Rules Should Preserve the Integrity of the Cost-Sharing Plan.

1. In its Notice, the Commission proposed to treat PCS licensees that enter the market as a result of partitioning or disaggregation "as any other subsequent PCS licensee for purposes of the cost-sharing plan" adopted in WT Docket No. 95-157.^{2/} The Commission did not, however, address what would happen in the not so unlikely event that at least some new entrant PCS licensees will be unable to satisfy their cost-sharing obligations.^{3/} Thus, API urged the Commission in its Comments to adopt certain measures to ensure that the proliferation of new PCS market entrants will not undermine the integrity of the cost-sharing plan. API's primary recommendation in this regard was that PCS auction winners retain ultimate responsibility for the cost-sharing obligations associated with their entire originally licensed service areas and spectrum blocks.

^{2/} Notice at ¶ 64.

^{3/} As API noted in its Comments, a primary goal of the Commission's partitioning and disaggregation proposal is to encourage market participation by small businesses that do not possess the financial resources needed to prevail at PCS auctions.

2. Several other parties addressed the cost-sharing issue in their Comments. The Cellular Telecommunications Industry Association ("CTIA"), GTE Service Corporation ("GTE") and Sprint Spectrum, L.P. ("Sprint Spectrum") agreed with the Commission's proposal to treat PCS license transferees similar to other PCS licensees with respect to the cost-sharing plan.^{4/} However, Sprint Spectrum cautioned that new entrants should pay only for the relocation of links to which they would have caused interference.^{5/} In addition, CTIA and GTE pointed out that if the original licensee has already paid all reimbursement costs, the license transferee would not need to participate in the cost-sharing process.^{6/}

3. API is not opposed to the participation of PCS license transferees in the cost-sharing plan, nor to the additional limitations noted above, provided that original PCS licensees are charged with ultimate responsibility for the cost-sharing obligations associated with the license areas they partition and the spectrum blocks they disaggregate. Otherwise, a high rate of default upon reimbursement obligations may undermine the effectiveness of

^{4/} CTIA at 11; GTE at 10-11; Sprint Spectrum at 12.

^{5/} Sprint Spectrum at 13.

^{6/} CTIA at 12; GTE at 11.

the cost-sharing plan and render fruitless the concerted efforts of numerous parties and the Commission to devise a measure that promotes system-wide relocation of large microwave networks and prompt PCS deployment.

4. In response to the Commission's proposal that each PCS licensee that partitions or disaggregates its license should guarantee all or a portion of its original auction-related payment obligations to the government, NextWave Telecom Inc. ("NextWave") commented that it opposed any attempt to "make one entity the guarantor of the actions of another entity over which it has no control."^{7/} Thus, NextWave presumably is opposed as well to API's recommendation that original PCS licensees be required to safeguard the cost-sharing rights associated with partitioned or disaggregated PCS licenses. NextWave ignores the fact, however, that PCS auction winners have assumed certain obligations and responsibilities with respect to their entire licensed service areas and spectrum blocks. If original PCS licensees do not wish to guarantee another entity's fulfillment of these obligations, they either can refrain from transferring their license rights or demand compensation from their transferees for any cost-sharing or

^{7/} NextWave at 5.

other obligations associated with the partitioned and/or disaggregated licenses.

5. Several parties raised new issues or proposals in their Comments which may have implications for the microwave relocation rules and the cost-sharing plan. For instance, Omnipoint Corporation ("Omnipoint") urged the Commission to allow all PCS licensees to "swap" their spectrum with other PCS licensees within their geographic service areas.^{8/} Like the Commission's proposed partitioning and disaggregation rules, this proposal may be detrimental to the cost-sharing plan if obligations are transferred from a solvent entity to an insolvent entity. Accordingly, should the Commission adopt Omnipoint's proposal, API believes that in this context as well, PCS licensees should retain ultimate responsibility for the cost-sharing obligations stemming from their original license rights. In other words, PCS licensees should not be permitted to "swap" their cost-sharing responsibilities.

6. Finally, BellSouth Corporation ("BellSouth") and the Personal Communications Industry Association ("PCIA") requested that the Commission permit original licensees to reclaim partitioned or disaggregated spectrum if a new

^{8/} Omnipoint at 12.

licensee defaults under its contract.^{9/} API supports this proposal so long as original licensees would also reclaim primary responsibility for any outstanding cost-sharing obligations or other duties owed to microwave incumbents under the Commission's relocation rules.

II. CONCLUSION

7. Bolstered by widespread support from PCS interests, as well as microwave incumbents, the Commission adopted the cost-sharing plan to promote system-wide relocations and prompt PCS deployment. Cost-sharing clearinghouses recently were selected to administer the cost-sharing rules, and the plan is now underway. To ensure the success of this important measure, the Commission must remain firm in its commitment to the effective implementation of the cost-sharing process. While there certainly are potential benefits associated with the Commission's PCS partitioning and disaggregation proposal, they should not be achieved at the expense of initial PCS relocators and self-relocating microwave incumbents.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Reply

^{9/} BellSouth at 8; PCIA at 8.

Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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